

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO.: 0:23-cv-60703 DSL

BAUTECH USA, INC.,

Plaintiff,

v.

RESOLVE EQUIPMENT, INC.,
RESOLVE MARINE GROUP, INC.,
OLSEN ASSOCIATES, INC.,
SKYRISE ENGINEERING &
TESTING, LLC, AND FEDERAL
INSURANCE COMPANY,

Defendants.

RESOLVE EQUIPMENT, INC.,

Third-Party Plaintiff/
Third-Party Defendant,

v.

PENNSYLVANIA NATIONAL
MUTUAL CASUALTY INSURANCE
COMPANY,

Third-Party Defendant/
Third-Party Plaintiff.

NOTICE OF DISCOVERY DISPUTE

Defendant/Counter-Plaintiff, Resolve Equipment, Inc. (“Resolve Equipment”) pursuant to Section II-C of the Court’s Discovery Procedures Order hereby files a Notice of Discovery Dispute against Plaintiff/Counter-Defendant, Bautech USA, Inc. (“Bautech”) describing the nature of the

parties' discovery dispute, the discovery deadline, the parties' efforts made to confer, the parties' dates of availability, and the amount of time needed for hearing:

NATURE OF DISCOVERY DISPUTE

Bautech has failed to collect internal WhatsApp and text messages from its designated ESI custodians and raw data from its concrete batching plant computer in accordance with Section IV-B of the parties' Stipulated ESI Order. This missing discovery from Bautech is important to this case because there are allegations in this case that Bautech deviated from the Project's concrete mix design and engaged in internal efforts to conceal resulting defects from inspectors.

THE DISCOVERY DEADLINE

The parties' current deadline to complete discovery is April 26, 2024. The parties' have made a joint motion that is currently pending before the Court requesting that the Court extend the discovery completion deadline to June 5, 2024. The parties are in the process of scheduling a number of depositions with key Bautech employees from its concrete production plant, some of which reside outside the country.

THE PARTIES' EFFORTS TO MEET AND CONFER

The parties have conferred regarding this discovery on several occasions over the phone and via email. Bautech's initial production of its WhatsApp and text messages consisted of only a handful of screenshots (not actual files) and the screenshots were cutoff. After conferring with Bautech's counsel about this issue, Bautech produced a few *group* message threads in a more acceptable format, but continued to fail to produce Bautech *internal one-on-one* text and WhatsApp messages to and from its ESI custodians. On March 4, 2024, Bautech's concrete plant director Rodrigo Prah (a Bautech ESI custodian) testified at his deposition that no one from Bautech collected his cell phone or computer devices to extract his text messages, WhatsApp

messages, or emails. On March 18, 2024, undersigned counsel spoke with Bautech's counsel over the phone about Bautech's failure to properly collect its WhatsApp and text messages from its designed custodians and collect its batching plant data. Bautech's counsel could not offer a resolution.

DATES OF AVAILABILITY

Both undersigned counsel for Resolve Equipment and Bautech's counsel are available any time on the dates of March 26, 28, or 29 for a hearing regarding this discovery dispute.

TIME NEEDED FOR HEARING

The parties anticipate needing 30 minutes for a hearing regarding this discovery dispute.

CERTIFICATE OF GOOD FAITH EFFORT TO CONFER

I HEREBY CERTIFY that undersigned counsel for the moving party has conferred with opposing counsel on all issues raised in this Notice of Discovery Dispute and confirmed opposing counsel's availability on the proposed dates.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of March, 2024, that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List via electronic mail transmission.

Respectfully submitted,

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and Resolve Marine Group, Inc.*
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SERVICE LIST

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